

National Committee on Vital and Health Statistics October 30, 2002

Alan Mertz
Executive Vice President
Healthcare Leadership Council

Need For HHS Guidance & Resources: State/HIPAA Study

- Identify State Rules
- Which State Rules Relate To HIPAA Reg
- Which State Rules Preempted
- Where NOT Preempted, How Comply With State & Federal Rules?

HIPAA Preemption Framework

- Congress Intended Federal Floor
 - ◆ HIPAA “supersedes any contrary state law”
 - ◆ Only exception where state “more stringent”
- HHS Flipped Burden of Proof
 - ◆ HHS Rule “do not supplant state law, except”
- HHS “Contrary” Definition Set Bar High
- Must be “impossible” to comply with both

Unraveling State Laws – No HHS Help

- No neat and tidy state laws
- A confusing patchwork
- Florida: Patient privacy buried in 60 laws
- Other states privacy found in evidence, education, library, cosmetics, revenue, school, and dozens of other statutes

Why State/HIPAA Study Needed?

- HHS says it's needed
- To determine:
 - ◆ Notice
 - ◆ Access to records
 - ◆ Disclosures and authorizations
 - ◆ Research

HHS Resisted Doing “Global Study”

- “We acknowledge complexity of State privacy requirements...”
- “more efficient for professional associations or individual businesses to complete...”
- “Department will not do the kind of global analysis requested by comments”
- “do not agree that the task of evaluating state law is unduly burdensome...”

Private Efforts Costly, Inconsistent, Ineffective

- No private global study...yet
- So far, private studies of one entity or one state
- Many providers cannot afford study
- Single state studies: \$50,000
- Single industry national study: \$1.5-\$2 mil.
- No consistent methodology

Coalition Comprehensive Study

- Coalition saw need for comprehensive, collectively funded study
- National law firm selected
- Only study to include all affected entities, all 54 states and jurisdictions
- Will use consistent standards
- Web-based, user friendly access to study
- Updated annually

Comprehensive Study: Funding

- Total cost: \$1.15 million
- Updates: \$100,000 annually
- Costs per user range from \$5,000-\$50,000
- Total commitments, \$700,000
- Cannot start until funds raised
- Compliance deadline looms

Need HHS Partnership & Help

- Partnership needed for design, completion, certification, and funding
- Dedicating HHS officials' time
- Helping with one-third cost of study
- Helping with cost of updates
- Some certification that this is a standard

Everyone Would Benefit From Partnership

- HHS would meet Congress instructions that HHS help with compliance
- Partnership would significantly improve entity compliance with federal and state privacy rules
- Valuable health care resources would be saved